THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 17013 of 2007

DATED: 14-08-2007

Between:

Mahaboob Bee

…Petitioner

and

Government of A.P., rep. by its
Principal Secretary, Municipal Administration and
Urban Development, Hyderabad and another

…Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.No. 17013 of 2007

Oral order:

The petitioner initially owned Ac.5-00 of land in Sy.No.84 of Mamidalapadu Village, Kurnool District. This land was sold in favour of M/s Sri Venkataramana House Building Society, which obtained a lay out plan from the Kurnool Municipality, which has now become a Corporation (the 2nd respondent), in T.P.No.40/71. After disposal in favour of the House Building Society, the petitioner is left with an extent of 1534 Sq. yards.

The petitioner with a view to construct a building in the aforementioned extent of land, applied to the 2nd respondent. The 2nd respondent is stated to have informed the petitioner that in the proposed master plan a 60 feet wide road has to pass through the petitioner's land and therefore, grant of a house building permission may not be possible. Thereafter the petitioner represented to the 2nd respondent-Corporation for allotment of an alternative land available adjacent to the lay out in T.P.No.40/71. The Council of the 2nd respondent on 4-8-2003 passed Resolution No. 39 of 2003 to the effect that the vacant land adjacent to T.No.40/71 at Premnagar be allotted to the petitioner so as to enable the 2nd respondent to take over the petitioner's land for the purpose of the road under the proposed master plan. This resolution of the 2nd respondent was sent to the 1st respondent for confirmation through the letter of the 2nd respondent dated

2-12-2003. The petitioner also made a representation to the 1st respondent on 18-12-2001 for allotment of alternative land. Till date neither the petitioner is being permitted to construct in her property of 1534 Sq. yards in Sy.No.84 adjacent to the sanctioned layout in T.P.No.40/71, nor is the land of the petitioner acquired by due initiation of proceedings under the Land Acquisition Act, 1894 (for the purpose of laying of the road under the proposed master plan), nor have the respondents have taken any steps to allot alternative land in lieu of the land which is perhaps required by the respondents for the future master plan. This total inaction has caused prejudice to the petitioner and has triggered this writ petition.

Sri A.Sridhar, the learned standing counsel for the 2nd respondent states that the available land adjacent to the lay out No.40/71 which is sought by the petitioner in lieu of her land is not available as the said land was reserved for a community purpose and its user cannot be altered. With regard to grant of building permission, the learned standing counsel would state that as the land is required for laying a road under the proposed master plan, no building permission could be granted as that would involve higher compensation outlay by the Municipal Corporation. Insofar as acquisition of the petitioner's land is concerned, the learned standing counsel states that there are no steps in currency for acquisition of the petitioner's land.

The learned standing counsel is unable to spell out under what authority of law the 2nd respondent is authorised to reject the petitioner's application for building permission for the ground that in a proposed master plan (proposed at some future and indefinite point of time) the petitioner's land might be required for laying of a road.

In the facts and circumstances recorded above, the action of the respondents 1 and 2 and in particular of the 2nd respondent is wholly arbitrary. There is a discernible abuse as well as abdication of

statutory responsibility to ensure fidelity to sound administrative practices and the text of the law, the 2nd respondent is required to pass an order either granting or declining building permission to the petitioner and to communicate to the petitioner the reasons for the rejection, reasons which are lawful. The 2nd respondent has not done so in respect of the earlier application of the petitioner for building permission, the Council of the 2nd respondent in a Resolution No.39 dated 4-8-2003 has merely recorded that the 2nd respondent had refused permission to the petitioner on the ground that there was a proposed master plan having a 60 feet wide road that would run through the petitioner's land. This was recorded while recommending for grant of alternative land belonging to the Corporation. Despite the proposal of the 2nd respondent in this behalf, the 1st respondent has not granted permission to the 2nd respondent for grant of the alternative land to the petitioner.

In the facts and circumstances above, the petitioner is granted liberty to submit a fresh application for building permission to the 2nd respondent complying duly with the formalities that should accompany the submission of such an application. On receipt of such an application and within (30) days from the date of receipt of such an application, the 2nd respondent shall pass a reasoned order, taking a decision on the petitioner's application for building permission and shall communicate the same to the petitioner by registered post acknowledgment due. In case the 2nd respondent is unable to record a statutory basis for declining the petitioner's application for building permission (which enables the 2nd respondent to decline grant of building permission on the ground that in an embryonic master plan this property would be required for a future road), the 2nd respondent shall not decline grant of building permission. If there be no authority to decline permission, the 2nd respondent shall grant building

permission if the petitioner's application is otherwise in order and complies with the relevant building byelaws. In any event, the 2nd respondent shall communicate a decision to the petitioner duly recording reasons, within (30) days as directed.

The writ petition is disposed of as above. There shall be no order as to costs.

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GODA RAGHURAM, J

14-08-2007
GRR